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4743	7590	05/03/2010	EXAMINER	
MARSHALL, GERSTEIN & BORUN LLP			SHEN, WU CHENG WINSTON	
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6300 WILLIS TOWER			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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PHILIPS INTELLECTUAL PROPERTY & STANDARDS
P.O. BOX 3001
BRIARCLIFF MANOR NY 10510

In re Application of: :
Kollet et al. :
Serial No.: 10/522,299 : PETITION DECISION
Filed: August 25, 2006 :
Attorney Docket No.: **DE 020188** :

This is in response to the petition under 37 CFR § 1.181, filed March 17, 2010, requesting that the finality of the Office action of January 20, 2010 be withdrawn.

BACKGROUND

The examiner mailed a non-final Office action on May 27, 2009 setting a three month statutory limit for reply. At the time of this non-final Office action, claims 1-62 were pending, claims 1-29, 37 and 40-62 were withdrawn as being directed toward a non-elected invention and claims 30-36, 38 and 39 were examined on their merits. Claims 30-36, 38 and 39 were rejected under 35 USC 112, second paragraph, for being indefinite. Claims 30-36, 38 and 39 were rejected under 35 USC 102 (b) as being anticipated by Kollet et al. as evidenced by Janowska-Wieczorek et al. . Claims 30-36, 38 and 39 were rejected again under 35 USC 102 (b) as being anticipated by Kollet et al. as evidenced by Janowska-Wieczorek et al.

On October 12, 2009, applicants submitted a response including arguments and amendments to the claims.

On January 20, 2010, the examiner mailed a final Office action setting a three month statutory limit for reply. At the time of this final Office action, claims 1-62 were pending in the application. Claims 30-36, 38 and 39 were newly rejected under 35 USC 103(a) as being unpatentable over Kollet et al. in view of Heissing et a., Togawa et al., Rafii et al. and Sadatmansoori et al.

In response thereto, applicants filed this petition on March 17, 2010, requesting that the finality of the Office action of January 20, 2010 be withdrawn.

DISCUSSION

The petition and the file history have been carefully considered.

Applicants argue that the "first amendment added the limitation that the matrix metalloprotease (or active portion thereof) be exogenous. In the sole claim rejection in the outstanding final Office Action, the Examiner relied on Kollet, Heissig, Rafii, Togawa and Sadatmansoori, but the Examiner did not cite any of these references as disclosing or suggesting an exogenous matrix metalloprotease. Based on the failure to rely on any cited reference as disclosing or suggesting the "exogenous" matrix metalloprotease of the amended claims, it cannot be true that so amending the claims necessitated the admittedly new rejection imposed in the outstanding final Office Action." This argument is not persuasive because the secondary reference to Togawa et al. teach that the functionally active MMP-2 and MMP-9 Highly activated matrix metalloproteinase-2 secreted from clones of metastatic lung nodules of nude mice are exogenous to the stem cells embraced by the claims.

Applicants also argue that "The second amendment to claim 30 clarified the scope of the claimed subject matter. The Examiner rejected claim 30 under 35 U.S.C. § 112, second paragraph, as indefinite in reciting a "predetermined threshold" without adequate definition of the threshold. In response, Applicants defined the threshold as an increase in CXCR4 levels in the presence versus the absence of the matrix metalloprotease. Again, the Examiner did not rely on any of the references cited in the outstanding final Office Action as disclosing or suggesting this element of the amended claim." This argument is also not persuasive since the final Office action of January 20, 2010 recites that Kollet et al. teach an increase in CXCR4 levels (see first paragraph of page 7 continuing onto page 8).

Accordingly it is considered that applicants' amendments necessitated new grounds of rejection. Consequently, the final Office action of January 20, 2010 is not considered improper and the finality of said Office action will not be withdrawn.

DECISION

The petition is **DENIED**.

Any new or renewed petition must be filed within TWO MONTHS of the mail date of this decision.

Should there be any questions about this decision please contact Marianne C. Seidel, by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 703-872-9306.



George C. Elliott
Director, Technology Center 1600